

**IN THE MATTER OF THE CIVIL AVIATION ACT 2012 BEFORE THE  
COMPETITION AND MARKETS AUTHORITY ('CMA')**

**BETWEEN:**

**BRITISH AIRWAYS PLC ('BA')**

**DELTA AIR LINES, INC ('Delta')**

**HEATHROW AIRPORT LIMITED ('HAL')**

**VIRGIN ATLANTIC AIRWAYS LIMITED ('VAA')**

**Appellants**

**and**

**THE CIVIL AVIATION AUTHORITY ('CAA')**

**Respondent**

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**ORDER OF THE CMA**

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**UPON** reading the Notices of Appeal from each of the Appellants against the decision of the CAA to modify the conditions of the licence of HAL to give effect to the CAA's H7 Final Decision (the 'Final Decision');

**AND UPON** the CMA granting the Appellants permission to appeal the Final Decision subject to the condition that certain of the appeals and grounds be considered together as Joined Ground A, Joined Ground B and Joined Ground C;

**AND UPON** the CMA deciding on 16 May 2023 to extend the period for determination of each of the appeals until 17 October 2023 pursuant to section 28 of the Civil Aviation Act 2012.

**AND UPON** the CMA granting the applications for permission to intervene of HAL, BA and Delta;

**AND UPON** the CMA considering the grounds of appeal and the representations and submissions of the parties;

**AND UPON** the CMA issuing its reasoned determinations in respect of these proceedings on 17 October 2023 (the '**Final Determination**')

**IT IS ORDERED THAT:**

1. For the purposes of this Order, capitalised terms not otherwise defined have the meanings given in the Final Determination.

**Joined Ground A (RAB adjustment)**

2. In respect of the RAB adjustment, HAL's ground 1 of appeal, BA's ground 2 of appeal, Delta's ground 3 of appeal and VAA's ground 3 of appeal are each dismissed and the Final Decision is confirmed.

**Joined Ground B (cost of capital)**

3. HAL's ground 2 of appeal in respect of the cost of equity and HAL's ground 3 of appeal in respect of cost of debt are each dismissed and the Final Decision is confirmed in these respects.
4. In respect of the WACC, BA's ground 3 of appeal, Delta's ground 2 of appeal and VAA's ground 2 of appeal are each dismissed and the Final Decision is confirmed save in respect of the allegation in these grounds of appeal that the CAA erred in applying an index-linked premium, as set out in its Final Decision, to HAL's cost of debt, in which limited part the appeals are allowed.
5. The CMA quashes, and remits for reconsideration, the CAA's decision to apply an index-linked premium to HAL's cost of debt.

**Joined Ground C (passenger forecast/ forecasting)**

6. In respect of the passenger forecast/ passenger forecasting, BA's ground 1 of appeal, Delta's ground 1 of appeal and VAA's ground 1 of appeal are each dismissed and the Final Decision is confirmed save in respect of the allegation in these grounds of appeal that the CAA's Final Decision was wrong because in Step 4 the CAA was wrong to select 0.87% as the Shock Factor figure to apply and so was wrong in law, in which limited part we allow the appeals.
7. The CMA quashes, and remits for reconsideration, the CAA's decision to apply a Shock Factor at the level of 0.87%.

## **Ground D (AK-factor)**

8. In respect of the AK-factor, HAL's ground 4 of appeal is dismissed and the Final Decision is confirmed save in respect of the allegation that the CAA was wrong in the manner of its application of the AK factor in 2020 and 2021 (as set out at paragraphs 10.117 to 10.121 of the Final Determination), in which limited part we allow the appeal.
9. The CMA quashes, and remits for reconsideration, the CAA's decision in relation to the manner of its application of the AK factor in 2020 and 2021.

## **Ground E (Capex incentives)**

10. HAL's ground 5 of appeal in respect of Capex incentives is dismissed and the Final Decision is confirmed.

## **Reasons**

11. The reasons for the determinations in this Order are set out in the Final Determination. The Final Determination forms part of this Order.

## **Miscellaneous**

12. Upon completing its reconsideration of the matters referred to at points 5, 7 and 9 above, the CAA is directed to make such consequential amendments to HAL's licence as are necessary within a reasonable time and in any case sufficiently promptly such that they can reasonably be taken into account by HAL when it consults during summer 2024 on the setting of charges for 2025 (as required under the ACR 2011).
13. Costs are reserved.

Kirstin Baker

**Group Chair**

**17 October 2023**